

APPROVAL OF CONSENT AGENDA

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Dennis Andresky, Parks & Recreation Director 954-797-1150

PREPARED BY: Dennis Andresky, Parks & Recreation Director

SUBJECT: Resolution

AFFECTED DISTRICT: Town-wide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE APPROVING AN EXTENSION OF THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND TOBY'S CONCESSIONS SERVICE, INC. FOR CONCESSION SERVICE AT DAVIE PINE ISLAND PARK AND AUTHORIZING THE MAYOR TO ACCEPT AMENDMENTS A, B, C, AND D TO SAID AGREEMENT.

REPORT IN BRIEF: This resolution extends the Town's existing Davie Pine Island Park concession service agreement for the first of two allowable three year extension periods and amends said agreement as listed in Attachments A, B, C, and D. The amendments to the agreement will provide for the following:

A. Adjust agreement termination date from January 4, 2013 to January 15, 2013 in order to provide continuity of service for the Girls Softball Tournament that is normally scheduled for the first or second weekend each January. The current termination date could result in a disruption of service due to vendor changeover during this tournament.

B. Give the Town the option to take over operation of the Pine Island Pool concession during the second and third years of the extension period. Pool concession operation is normally limited to the summer months and specials events. Aquatics Division staff are evaluating the potential increased revenue that could result from inhouse concession operation as part of their Divisional Strategic Plan Objectives.

C. Increase the amount of fixed monthly payment to the Town from \$1,250/month to \$1,500/month.

D. Allow the Town's Approved Travel Sports Groups to sell popcorn and snowcones for fundraising purposes.

Staff attempted to negotiate an agreement with the Town's Travel Sports Groups for take over of concession operation in its entirety, however the one proposal presented by the groups was withdrawn. Service provided by Toby's has been satisfactory. Staff recommends approval of the resolution as presented.

PREVIOUS ACTIONS:

CONCURRENCES: Town Attorney has reviewed and approved the amendments

FISCAL IMPACT: Yes

Has request been budgeted? n/a

If yes, expected cost: \$

Account name and number:

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments: Fixed annual revenue payment
to Town to increase from \$15,000 to \$18,000.

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): resolution, vendor recommendation letter, Department recommendation letter, vendor's corporate papers, agreement, amendments

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE APPROVING AN EXTENSION OF THE AGREEMENT BETWEEN THE TOWN OF DAVIE AND TOBY'S CONCESSIONS SERVICE, INC. FOR CONCESSION SERVICE AT DAVIE PINE ISLAND PARK AND AUTHORIZING THE MAYOR TO ACCEPT AMENDMENTS A, B, C, AND D TO SAID AGREEMENT.

WHEREAS, the Town has a service agreement with Toby's Concession Service, Inc. for concession service at Davie Pine Island Park; and

WHEREAS, Toby's Concession Service Inc, requests to extend the agreement for the first of two allowable three year extension periods and to effect certain Amendments to the agreement as detailed in Attachments A, B, C and D; and

WHEREAS, after consideration, the Town desires to approve said agreement extension and amendments as attached,

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. Hereby approves a three year extension with Toby's Concession Service, Inc. for the provision of concession service at Davie Pine Island Park.

SECTION 2. Hereby authorizes the Mayor to amend the agreement between the Town of Davie and Toby's Concession Service, Inc. for concession service as listed in Attachments A, B, C and D.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009



November 24, 2009

Dennis Andresky
Town of Davie
Parks & Recreation Director
954-797-1150

Dear Dennis:

I would like to request the first of two allowable three year extension periods as the Concessionaire for Davie Pine Island Park.

Please extend the Contract under the same terms and conditions, except for the following amendments:

- a. Amend "A. License and Terms Item 1" to provide for the three year extension term to commence on January 1, 2010 and terminate on January 15, 2013
- b. Amend "A. License and Terms" to add Item 3. to provide: Town shall have the option to take over the operation of the Pool Area Concession during the second and third year of the extension period
- c. Amend "B. Payment" to increase monthly payment to Town from \$1,250/month to \$1,500 per month
- d. Amend "I. Operations" to add "Item 25." To provide: The Towns Approved Travel Sports Groups may conduct fundraising sale of snow cones and popcorn during their program practices, games and tournaments

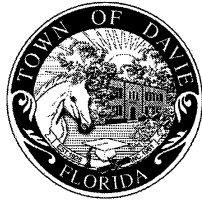
Thanks in advance for the attention provided.

Sincerely,

Chris de la Hoz
President

c.c. File.

10811 N.W. 29th Street – Miami, FL 33172 – Phone (305) 718-4911 Fax (305) 718-4912 E-Mail
tobysconcessions@bellsouth.net



PARKS AND RECREATION DEPARTMENT
6901 ORANGE DRIVE • DAVIE, FLORIDA 33314-3399
PHONE: 954.797.1145 • FAX: 954.797.1148 • WWW.DAVIE-FL.GOV

Memorandum

TO:	Mayor & Councilmembers
FROM:	Dennis Andresky, Parks & Recreation Director
SUBJECT:	Recommendation for Pine Island Park Concession Service Agreement Extension and Amendments
DATE:	12/2/09

It is recommended that the Town's current concession service agreement with Toby's Concession Service, Inc. for concession service at Davie Pine Island Park be extended for the first of two allowable three years extension periods. The vendor has provided satisfactory performance during the first three year service period. The three year extension period will begin on January 1, 2010 and end on January 15, 2013.

The vendor is also requesting approval of four amendments to the agreement. The amendments will adjust the contract termination date to better serve Town tournament scheduling needs, allow for the Town to take over the operation of the pool concession if desired, increase the payment amount to the Town from \$1250 to \$1,500 per month and allow for fundraising sale of popcorn and snow cones by approved Town travel Teams. Staff recommends approval of the requested amendments.

FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS					
Home	Contact Us	E-Filing Services	Document Searches	Forms	Help
Previous on List	Next on List	Return To List			<input type="text" value="Entity Name"/>
Events	Name History				<input type="text" value="Status"/>
Detail by Entity Name					
<u>Florida Profit Corporation</u>					
TOBY'S CONCESSION SERVICES, INC.					
<u>Filing Information</u>					
Document Number	P96000088621				
FEI/EIN Number	650754149				
Date Filed	10/28/1996				
State	FL				
Status	ACTIVE				
Last Event	AMENDMENT				
Event Date Filed	10/13/2005				
Event Effective Date	NONE				
<u>Principal Address</u>					
10811 NW 29TH ST MIAMI FL 33172					
Changed 04/01/2004					
<u>Mailing Address</u>					
10811 NW 29TH ST MIAMI FL 33172					
Changed 04/01/2004					
<u>Registered Agent Name & Address</u>					
DE LA HOZ, CRISTOBAL 10811 N.W. 29 ST MIAMI FL 33172 US					
Name Changed: 04/08/2008					
Address Changed: 04/01/2004					
<u>Officer/Director Detail</u>					
<u>Name & Address</u>					
Title P					
DE LA HOZ, CRISTOBAL 10811 NW 29TH ST					

MIAMI FL 33172 US

Title S

LLACH, LILIANA
10811 NW 29TH ST
MIAMI FL 33172 US

Title VP

LLACH, LILIANA
10811 NW 29TH STREET
MIAMI FL 33172**Annual Reports****Report Year Filed Date**

2008	04/08/2008
2008	05/01/2008
2009	04/14/2009

Document Images

04/14/2009 -- ANNUAL REPORT	View image in PDF format
05/01/2008 -- ANNUAL REPORT	View image in PDF format
04/08/2008 -- ANNUAL REPORT	View image in PDF format
04/23/2007 -- ANNUAL REPORT	View image in PDF format
05/01/2006 -- ANNUAL REPORT	View image in PDF format
10/13/2005 -- Amendment	View image in PDF format
07/12/2005 -- Name Change	View image in PDF format
04/27/2005 -- ANNUAL REPORT	View image in PDF format
04/01/2004 -- ANNUAL REPORT	View image in PDF format
05/02/2003 -- ANNUAL REPORT	View image in PDF format
09/12/2002 -- ANNUAL REPORT	View image in PDF format
04/25/2001 -- ANNUAL REPORT	View image in PDF format
04/25/2000 -- ANNUAL REPORT	View image in PDF format
04/22/1999 -- ANNUAL REPORT	View image in PDF format
04/14/1998 -- REINSTATEMENT	View image in PDF format
10/28/1996 -- DOCUMENTS PRIOR TO 1997	View image in PDF format

Note: This is not official record. See documents if question or conflict.[Previous on List](#) [Next on List](#) [Return To List](#)[Events](#)[Name History](#)

Entity Name

State

CONCESSIONAIRE AGREEMENT

THIS AGREEMENT made and effective as of December 20th, 2006, by and between the Town of Davie, a municipal corporation located in Broward County Florida (hereinafter referred to as "Town"), and Toby's Concession Services, Inc. a corporation duly organized and existing according to the laws of the State of Florida (hereinafter referred to as "Licensee").

WITNESSETH;

WHEREAS, the Licensee is an incorporated enterprise engaged in the operation of food and beverage concession and catering service; and

WHEREAS, the Town owns buildings and concessions stands, (hereinafter referred to as the "Licensed Premises"), intended to be used in part for the sale of food and beverages to its patrons; and

WHEREAS, the Licensee desires to acquire the right to sell concession food and beverage items at the Licensed Premises located at Davie Pine Island Park, and to that end, to use and occupy those portions of the Licensed Premises which are to be used for the sale of food and beverages to patrons of said Licensed Premises and for storage, and as the Town is willing and has the authority to grant such rights to the Licensee and to permit the use of such portions of said Licensed Premises by the Licensee, as hereinafter set forth.

WHEREAS, the Request for Proposal for Concessionaire Stand Operation is included in this agreement by reference.

NOW, THEREFORE, in consideration of the Licensed Premises and of the covenants and conditions hereinafter set forth, the Town and the Licensee agree as follows:

A. LICENSE AND TERMS

1. Upon the terms and conditions hereinafter set forth, the Town does hereby license and grant unto the Licensee, and the Licensee hereby accepts and agrees to exercise the sole and exclusive rights and privileges to those parts or portions of the Licensed Premises located at Davie Pine Island Park which are designed and intended to be used for the sale of refreshments, and food sales made on the Licensed Premises, together with storage area adjacent to or relating thereto. Said Licensed Premises to be used by the Licensee for the preparation, display, promotion and sale at retail to

patrons or prospective patrons of said Licensed Premises of assorted candies, confections, popcorn, ices, ice cream, milk, coffee, soft drinks, water and other non-alcoholic beverages, sandwiches, pizzas, refreshments of all kinds whether or not similar to those above enumerated, excluding tobacco products, and for the storage of said products and merchandise and ingredients thereof and of boxes, containers, utensils and materials or equipment relating to such preparation, display, promotion and sale for the rendition of such services in connection with said business as are customarily rendered by Concessionaires or Licensees at similar concessions and/or public amusements.

2. The term of this agreement shall be for the period commencing January 1, 2007, and terminating three (3) years from this date. The Town reserves the right to extend the contract for two (2) additional three (3) year periods providing the extension is mutually acceptable by both parties and approved by the Town of Davie Town Council.

B. PAYMENT

1. As payment for the License hereby granted and for the right and privilege of selling food, beverages, refreshments and other concession type product, the Licensee shall pay to the Town a Fixed Monthly Amount of \$1,250.00 per month for Regular Season Sports Program Games and Practices; \$150 per program for Post Season Sports Program Games and \$150 per tournament for Tournament Events consisting of thirty (30) or more teams and conducted for a minimum of two (2) days.

2. Payments are due and payable once per month to the Town of Davie by the 10th of each month for the previous month service.

C. Existing Equipment

1. Davie Pine Island Park, 3801 South Pine Island Road, Davie, has six concession stand facilities with the following equipment:

Pool Area Concession: Chest Freezer; Coke Refrigerator

Concession #1: No equipment.

Concessions #2, #3, #4, #5: Ice Maker; Upright Freezer;
Upright Refrigerator; Coke Refrigerator.

2. Licensee shall have the use, without payment of additional compensation, of any counters, concession stands, bars, rails and equipment that are owned by the Town

and may be located at the Town's premises. The Licensee shall not be responsible to the Town for any of such items as may be worn out through normal wear and tear nor shall the Licensee be responsible to the Town for the replacement of such items during the term of this Agreement. However, the Licensee shall be responsible for damage resulting through any acts or omissions or the negligence or willful acts of neglect or default of the Licensee, its agents, servants and/or employees. Title of Town owned equipment will remain with the Town of Davie. Any Town owned equipment removed by the licensee shall be delivered to the Town and shall be reinstalled by licensee upon the termination of the lease.

3. The Licensee shall be given the opportunity to inspect the above listed Town owned equipment after the current concessionaire has vacated the premises. Equipment found not to be in proper working order will be repaired by the Town. Following equipment inspection and repair if necessary as noted, Licensee shall accept the durable equipment now available and maintain same at the Licensee's own expense. Title of Town owned equipment will remain with the Town of Davie. If any public agency having jurisdiction over such matters shall require safety or other improvements to any of the equipment used by the concessionaire in his/her operations, Licensee shall be required to effect these improvements at his/her sole expense.

4. Additional or replacement of durable equipment desired by the Licensee will be acquired and installed at Licensee's expense. Any Town owned equipment removed by the Licensee shall be delivered to the Town and upon the termination of the contract period Licensee shall remove any Licensee owned equipment installed and reinstall any Town owned equipment that was removed.

D. LICENSEE'S EQUIPMENT

1. The Licensee shall, at its own cost and expense, make improvements such as additional counters, concession stands, bars, and rails, and install such equipment, improvements, furnishings, warmers, and such other like items as approved by the Town's Parks and Recreation Director, in order to enable it to operate efficiently the business to be conducted hereunder, and shall maintain at the specified premises, during the term hereof, such items of a kind and number which it shall deem to be suitable for such efficient conduct of its business. All items provided for in this paragraph shall remain the property of the Licensee during the term of this Agreement and may be removed by same at any time during the term hereof without restriction.

2. If this Agreement is terminated for any reason whatsoever including expiration of the term, the Licensee shall remove its above described property within three (3) days of contract termination. If not so removed, said items shall become the property of the Town. Upon removal of Licensee's equipment, Licensee will return the

condition of the premises to the same condition it was in at the time of commencement of the License Agreement.

3. The Licensee shall provide a portable concession stand for use as specified herein.

E. MAINTENANCE, REPAIRS AND INSURANCE

1. The maintenance, during the term hereof, of all equipment or fixtures owned or used by the Licensee shall be at the sole cost and expense of the Licensee. The Licensee shall service all machines and equipment, replace defective parts or broken glass and in the event of loss or damage, shall promptly repair or if necessary, replace the same with similar equipment. In addition, Licensee duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in safe, clean, wholesome, sanitary, orderly and attractive condition. Licensee shall also be responsible for replacing broken or damaged window glass and for electrical, mechanical and plumbing maintenance in the interior of the premises, such as light fixtures, fans, sinks and faucets. The risk of loss by fire or other unavoidable casualty as hereinafter defined with respect to such equipment and the Licensee's inventory is that of and shall be borne by the Licensee and the Town shall not be liable for any loss or damage to such property, except such as may result from the negligence of the Town, its agents, servants and/or employees and not be covered by insurance. However, the Licensee shall carry, at its own expense, public liability insurance as hereinafter set forth in "Section P. Insurance. "

F. REMOVAL OF EQUIPMENT

With respect to any machine, equipment or fixture installed or provided by either of the parties hereto, the Licensee shall remove such equipment or fixtures or make whatever changes can reasonably be made therein in the event such removal or change shall be required by any governmental officer or body or by a board of fire underwriters of similar duly authorized body serving carrier of fire risks.

G. SUB-CONTRACTING

The Licensee shall notify the Town in writing in regard to sub-contracting any portion of the concession operations. The Licensee shall be responsible for all sub-contractors and they shall abide by all conditions set forth herein. The licensee shall be responsible for negligent or willful act of and/or omissions of all sub-contractors. The Town will have unbridled right to decide whether or not to agree to a subcontractor and no subcontractor shall be utilized by the Licensee under this Agreement without the written permission of the Parks and Recreation Director.

H. SURRENDER

Except as otherwise herein provided, the Licensee shall, at the termination hereof, surrender, yield up and deliver the interior of any building in which any concession operation is located in the same condition as they are at the commencement of the term or may be put in by the Town or Licensee during the continuance thereof, reasonable use and wear thereof, and damage by fire, or other unavoidable casualty as hereinafter defined excepted.

I. OPERATIONS

1. The Licensee shall obtain the approval of the Town's Parks and Recreation Director for all items to be sold at the concession buildings.

2. Licensee and Town, when applicable, cooperate with each other in the use of corporate sponsorship and the products, to the extent it does not conflict with Licensee's current vendor arrangements and does not require payment of more for goods and services than otherwise required. The Licensee shall use Coca-Cola products in the concession stands/facilities.

3. The term "concession sales" shall mean the selling of, but not limited to, snacks, candy, ice cream, soft drinks, hot dogs, doughnuts, coffee, milk, bottled water, fruit juice, hot chocolate and sandwiches. If any other item is to be sold, the Licensee must obtain the approval in writing from the Parks & Recreation Director.

4. The sale of any alcoholic beverage, tobacco, or gum products is not permitted. Licensee and all personnel under their direction must comply with the Town Park Smoking Ordinance. Failure to comply with the Town Smoking Ordinance is, at the sole discretion of the Town, grounds for immediate termination of this contract.

5. The areas designated for sales and the location of any and all concession sales shall be within the specified Licensed Premise areas. Use of the portable concession stand shall be limited to locations as specified by the Parks & Recreation Director. The Licensee will accept the present Licensed Premises, repair and maintain them in existing interior condition, and the Town shall not be requested to make any improvements or additions. Licensee's rights for use of the Licensed Premises will be subject to such legal obligations that the Town or third parties may have at the above sites.

6. Licensee shall pay for and obtain all licenses and permits necessary for operations including but not limited to: Town of Davie Occupation License. State of Florida Annual Food Permit, State of Florida Department of Agriculture and Consumer

Services Food Manager Certificate and any other licenses required by Broward County and or the State of Florida. All such necessary Permits and Licenses shall be prominently displayed at each concession facility.

7. Licensee shall keep the Licensed Premises clean and sanitary at all times. No refuse or offensive matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain thereon, and Licensee shall prevent any such matter or material from being or accumulating upon said premises. Licensee shall furnish satisfactory pest and rodent control for all designated areas.

8. Licensee shall conduct business at all times in a quiet and orderly manner as deemed appropriate by the Parks & Recreation Director.

9. Licensee shall provide such employees as may be required to render good service to the satisfaction of the Parks & Recreation Director as to their personal conduct, honesty, courtesy, health, personal appearance, and willingness to cooperate with employees of the Parks & Recreation Department. In the event an employee is not satisfactory, as herein defined, the Parks & Recreation Director or designee may direct the Licensee to correct the cause of said dissatisfaction or may direct Licensee to immediately remove the employee from the premises within.

10. It is the intention of the Town that the Licensee's management or supervisory personnel proposed for the contract will be available for the initial contract term. In the event the Licensee wishes to substitute personnel, he/she shall propose personnel of equal or higher qualifications and all replacement personnel are subject to Town approval. In the event substitute personnel are not satisfactory to the Town and the matter cannot be resolved to the satisfaction of the Town, the Town reserves the right to cancel the Contract for cause.

11. Licensee shall not knowingly permit the use or possession of narcotics and/or intoxicating liquors on the premises and shall promptly discharge any employee found to be doing so. The Parks & Recreation Director or other Town assigned representatives shall have the right to observe and inspect Licensee's operations at any time.

12. All employees/workers must have a health certificate if required by either the State, County, or Town regulations. Licensee shall provide and maintain an inventory in the concession stand of name brand food and drink items. All pure food and sanitation laws shall be observed and all products offered for sale shall be of the best quality and grade and shall be kept subject to the approval or rejection of the Parks & Recreation Director. Licensee shall remove from the premises any article which may be

rejected and shall not again offer it for sale without the consent of the Parks & Recreation Director.

13. For soft drinks dispensed by the Licensee, only non glass cups or containers shall be used. No styrofoam materials shall be used. An ample inventory must be stocked, displayed and ready for sale throughout the term of the lease. The Town has an agreement with the Coca-Cola Company which requires that only Coke products be sold on Town property. The Licensee must comply with the requirements of the agreement between the Town and the Coca-Cola Company.

14. Licensee shall keep the Licensed Premises adequately stocked and reasonably staffed to serve the patrons thereof, and Licensee shall maintain a standard of quality of food and beverage at least equal to similar operations within Broward County at reasonably comparable prices.

15. Licensee's duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly, and attractive condition. Licensee shall also be responsible for replacing broken or damaged window glass and for electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, fans, sinks, and faucets. However, the Town shall be responsible for maintenance of utility lines within the wall of the leased premises. The Town shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements.

16. The Town of Davie will pay all utilities; however, the Town reserves the right to inspect the Licensed Premises to insure conservation of the resources is being practiced by the Licensee. Blatant disregard of conservative measures shall be noted and the Licensee notified immediately in writing. Failure to correct the situation upon seven (7) days written notice shall be reason for cancellation of this agreement.

17. Licensee shall correct safety deficiencies and violations of safety practices immediately and shall cooperate fully with the Town in the investigation of accidents occurring on the premises.

18. Licensee may provide at his/her own expense any legal devices, installation, or equipment designed for the purpose of protecting the premises from theft, burglary, or vandalism, provided however, that written approval for any such installation be first obtained from the Parks & Recreation Director or designee, and at the termination of the lease, ownership of the device reverts to the Town.

19. All vending machines in place at the time the contract is executed shall remain in operation.

20. Licensee is responsible for contacting the Sports Program Coordinator or designee on a daily basis in order to confirm sports program scheduling and cancellation of scheduled sports programs due to inclement weather or other such conditions.

21. Licensed Premises are to be opened as follows:

a. For Regular Season Monday through Friday games and practices, the Licensed Premises shall be open at 6:00 pm and close at the end of the last scheduled game or practice.

b. For Regular Season Saturday and Sunday games and practices, the Licensed Premises shall be open at 9:00 am and close at the end of the last scheduled game or practice.

c. For all scheduled games and practices that have less than one-hundred and twenty-five (125) program registrants and program use is scheduled for multiple field areas which are normally served by more than one concession stand, the portable concession stand is to be placed in an approved location approximately midway between the scheduled program usage areas and opened for service from 6:00 pm till the end of the last scheduled game or practice.

d. For Adult Sports Programs when twelve (12) teams or more are registered, the Licensed Premises shall be opened at 6:00 pm and close at the end of the last scheduled game or practice.

e. The minimum hours of operation for the Aquatics & Fitness Center pool concession stand shall be as follows:

SUMMER HOURS

First Day of Public School Summer Break through Labor Day:

Monday through Friday - 10:00 am to 3:00 pm

Saturday and Sunday - 12:00 noon to 5:00 pm

WINTER HOURS

Day After Labor Day through the Day Prior to the

First Day of Public School Summer Break:

Saturday and Sunday - 12:00 noon to 4:00 pm

f. Licensed Premises shall be opened for Post Season Play, Tournaments and other Non-Regular Sports Program activities or events by mutual agreement of the Licensee and the Parks and Recreation Director.

g. Other hours as necessary will be scheduled as determined by the Parks & Recreation Director, with a minimum of two weeks notice in advance of such need or event. Any requested changes in the minimum days or hours of operation must be in writing and approved in advance by the Director. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

22. Licensee must provide ice for ice packs as needed for program participant injuries.

23. For sports tournaments, the Licensee will be given First Right of Refusal for the sale of food and beverage items not included in their approved menu. In the event the Licensee is unable or unwilling to provide the requested food or beverage item(s), the Town may at its' sole discretion use or allow the use of additional concessionaires and or vendors for the provision of said items. The concession stands as described herein would not be used for said food or beverage preparation or sales of the added concessionaire or vendor.

24. The Town reserves the right at its' sole discretion to use additional and or other vendors/concessionaires for Town events. This includes both profit and not for profit vendors.

J. PERFORMANCE BOND

Within approximately fifteen (15) working days after notification of Contract Award by the Town, the Licensee shall furnish a Performance Bond or a Certified Check in the amount of \$1000.00 covering ALL the conditions of this Agreement and such bond will be retained by the Town until the completion of any resulting contract. Any Performance Bond must be executed by a Surety Company of recognized standing, authorized to do business in the State of Florida. At the termination of the contract the premises must be returned to the Town in a clean and satisfactory condition. The Town has the right to call upon the bond or to utilize the funds from the Certified Check in the event that the Licensee defaults.

K. USE

1. The Licensee shall, at all times during the term hereof, have the free and uninterrupted use for itself, its agents, servants, employees, suppliers and business visitors of all rights and means of ingress which shall be reasonably necessary for the

conduct of the Licensee's business at the said facilities and for its operation hereunder, including all service areas, entrances, exits and related areas.

2. Licensee shall not interfere with the public enjoyment and use of the premises or surrounding public property for the purposes for which they were intended. It is understood that generally the Licensee will occupy certain designated portions of the Licensed Premises and the use in common with others of all access roads and common areas, including the parking lots.

L. INSPECTION

The Town and its representatives shall be permitted to enter the said buildings in which concession operations are located at any reasonable time for the purposes of inspecting and maintaining the same or complying with any of its obligations hereunder, or for furthering the operation of its business at the concession buildings.

M. EMPLOYEES

1. The Licensee agrees to employ a sufficient number of competent persons for the conduct of its business hereunder, and all such persons shall, at all times, be deemed employees of the Licensee and not of the Town and shall be employed and paid in accordance with all applicable laws. Licensee shall, in addition, provide workmen's compensation insurance for all of its employees. Licensee's employees will be required to render good service to the satisfaction of the Director as to their personal conduct, honesty, courtesy, health, personal appearance, and willingness to cooperate with employees of the Parks and Recreation Department. In the event an employee is not satisfactory, as herein defined, the Director may direct the Licensee to correct the cause of such dissatisfaction or may direct the Licensee to remove him/her from the premises within a reasonable time after written notice is received by the Licensee. All employees shall wear uniforms that bear the name of the company and clearly identifies them as an employee of the concessionaire.

2. Licensee shall provide Town proof of Florida Department of Law Enforcement background check information for all employees used in the conduct of business under this agreement.

N. ADDITIONAL CONCESSION LOCATIONS

Other Town of Davie Park sites may be added based on mutual agreement between the parties. Payment to the Town for the right and privilege to provide concession service at any additional agreed upon sites will be based on mutual agreement between the parties.

O. INDEPENDENT CONCESSIONAIRE

The Licensee is an Independent Concessionaire under this Agreement. Personal services provided by the Licensee shall be by employees of the Licensee and subject to supervision by the Licensee, and not as officers, employees, or agents of the Town. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies unless otherwise stated in this Agreement, and other similar administrative procedures applicable to services rendered under this Contract shall be those of the Licensee.

P. INSURANCE

The Licensee agrees to maintain such insurance as will protect it from the claims included but not limited to those set forth below which may arise out of or result from Licensee's operations under this Agreement, such insurance shall name the Town as additional insured.

1. Claims under Workers' Compensation and other similar laws.
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees under any applicable employer liability law.
3. Claims for damages because of bodily injury or death of any person other than employees of Licensee.
4. Claims for damages insured by usual personal injury liability coverage.
5. Claims for damages of injury to or destruction of tangible property, including loss of use thereof.
6. Claims for damages because of bodily injury or death or any person arising out of the ownership, maintenance or use of any motor vehicle by Licensee.

The types of insurance policies and limits to be maintained are as follows:

WORKERS' COMPENSATION & EMPLOYERS LIABILITY

Coverage A: Worker's Compensation - Statutory

Coverage B: Employers Liability

\$1,000,000 Each Accident

\$1,000,000 Disease - Policy Limit

\$1,000,000 Disease - Each Employee

COMMERCIAL GENERAL LIABILITY

Including Premises/Operations

Products/Completed Operations

Personal & Advertising Injury

Contractual Liability

\$1,000,000 Each Occurrence

AUTOMOBILE LIABILITY Business Automobile

Liability Insurance coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for: owned autos, hired autos and non-owned autos.

Insurance must be furnished to the Town's Purchasing Division and notification received of its approval by the Town PRIOR TO THE COMMENCEMENT of any work. The Town will be given fifteen (15) days written notice of any cancellation or material change in any policy.

Q. INDEMNITY/HOLD HARMLESS

1. The Licensee agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, defense costs, including attorneys' fees, and all other fees incidental to the defense, loss, or damage the town may suffer as a result of claims, demands, costs, or judgments against it arising from the subject project. Nothing in this agreement shall be construed to affect in any way the Town's rights, privileges and immunities as set forth in Florida Statutes 768.28.

R. CONFORMITY TO LAW

Licensee shall comply with all laws, ordinances, regulations and orders of Federal, State, County and Municipal authorities pertaining to the Premises and Licensee's operations thereon.

S. WARRANTY

The Licensee, by executing this contract embodying the terms herein, warrants that the product and/or services that is supplied to the Town shall remain fully in accord with the specifications and be of the highest quality. In the event any product and/or services as supplied to the Town is found to be defective or does not conform to specifications, the Town reserves the right to contact the Licensee for remedy of this situation. If not remedied within twenty (20) days, the Town will invoke the provision of the cancellation clause.

T. CANCELLATION

The Town may cancel this contract upon notice in writing should the Licensee fail to adequately perform the service of furnishing the products or services as specified herein, and/or upon thirty (30) days written notice. This applies to all items of goods and services.

U. ELECTRICITY AND UTILITIES

Town agrees to provide the Licensee adequate plumbing for providing hot and cold water to all concession and/or refreshment stands and locations as required by the Licensee. In addition, Town shall be responsible for providing heating to the property occupied by Licensee, and shall furnish at its own cost to the Licensee electrical service for operation of the refreshment and concession stands and outlets. The Town does not represent nor warrant the quality or quantity of the electrical current supplied by the utility company to the concession stands. Town shall, at its own cost, furnish Licensee with hot and cold running water and all services incidental thereto, with sufficient and proper cables, pipes, service lines and equipment to operate all the concession locations and equipment requiring same.

V. PREMISES INSPECTION

It shall be the sole responsibility of the Licensee to visit and inspect the premises prior entering into this Agreement. No variation in price or conditions shall be permitted based upon a claim of ignorance. Submission of a response to the Request for Proposal shall be considered evidence to the Town that the Licensee has familiarized himself/herself with local conditions and the nature and extent of the work, including management, labor, materials and equipment required.

W. PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any

goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

X. NEWS RELEASES/PUBLICITY

News releases, publicity releases, or advertisements relating to this contract or the tasks or projects associated with the project shall not be made without prior Town approval.

Y. PRICES CHARGED AND PRICE ADJUSTMENTS

1. The mutually agreed upon prices to be charged shall remain firm for a six (6) month period. Prices for new items and price increases require the prior approval of the Parks & Recreation Director. Such approval shall not be unreasonably delayed or denied if the recommended prices are competitive with, and consistent with prices charged at similar locations in Dade, Broward and Palm Beach counties.

2. The Town may, after examination, refuse to accept the adjusted or new prices if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the Town does not wish to accept the adjusted prices, and the matter cannot be resolved to the satisfaction of the Town, the Town reserves the right to cancel the contract upon giving thirty (30) days notice to the Licensee.

AA. THE TOWN WILL PROVIDE

The Town facilities currently meet all requirements of the Broward County Health Department. Licensee will be required to obtain all licenses in their name and at their cost prior to starting operations. The Licensee shall be required to honor any sponsorship agreements the Town enters into.

BB. REGISTRATION OF LOBBYISTS

Firms or individuals which wish to contact any official of the Town outside of the pre-submission conference or written request for information procedure must first register with the Town Clerk as a lobbyist for the Request for Proposal. Failure to register before contacting any official will result in disqualification from the proposal

and submissions will not be considered. Lobbying Registration Certificates (attached hereto) should be mailed to:

CC. POWER TO EXECUTE

The Town warrants and covenants that it is the legal owner or tenant of Licensed Premises, which are a part of the subject matter of this Agreement, and Licensee and has the legal power to execute this Agreement.

DD. VEHICLE ACCESS

Town warrants that the Licensee shall have access to the Leased Premises by vehicle or vehicles sufficient to service locations and provide supplies thereto.

EE. ASSIGNMENT

The Licensee shall have the right to sell or assign any portion of this contract with the written consent of the Town. The Licensee shall notify the Town in writing in regard to assignment of any portion of the concession operations. The Licensee shall be responsible for all those assigned and they shall abide by all conditions set forth in the Request for Proposal. The Town will have unbridled right to decide whether or not to agree to an assignment.

FF. MUNICIPAL REGULATIONS

Licensee agrees that at all times it will comply with all state, county, municipal and federal rules, regulations, laws, ordinances and zoning requirements and obtain and maintain all necessary licenses and permits prior to operation commencing.

GG. DEFAULT

In no event shall either party be deemed to be in default hereunder, unless that party is given written notice of the particular alleged default, and such default continues for a period in excess of thirty (30) days after receipt of notice. In the event such default continues for a period in excess of thirty (30) days after receipt of notice, the party giving notice shall have the right to terminate this Agreement. The written notice required to be given hereunder shall specify in reasonable detail the time, date, nature and circumstances of the claimed default.

HH. FORCE MAJEURE

It is expressly understood that failure or delay on the part of either party hereto in the performance, in whole or in part, of the terms and conditions of this Agreement, if such failure or delay is attributable to acts of God, fire, floods, inevitable accidents or riots, insurrections, public commotion, strikes or labor disturbances, embargoes, emergency or governmental orders, regulations priority or other limitations or restrictions, or unenforceable causes interfering with personnel, sales, sources of supplies, transportation or delivery of same shall not constitute a breach hereof, nor a default hereunder.

II. DEFINITION, INTERPRETATIONS AND GENERAL PROVISIONS

a. Nothing contained herein shall be construed so as to constitute between the parties herein any relationship of co-partners or of co-adventurers.

b. Wherever used in this Agreement, the term "unavoidable casualty" shall, in addition to its usual meaning, be deemed to cover all acts or events beyond the power of the Town and/or the Licensee (as the context may require) to prevent.

c. The various headings and the groupings of this Agreement into separate sections and paragraphs shall not be construed to limit or restrict either the meaning or the application of any provision hereof and are for the purpose of convenience only.

d. Any and all notices and remittances hereby provided or permitted to be made or given shall be addressed to the party to whom the same shall be directed at the address of such party hereinabove stated, unless such party shall have advised the other in writing of another different address to which such notices or remittances shall be sent.

e. This Agreement and each and every one of the provisions hereof shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns when permitted.

f. All provisions of this Agreement shall be construed in accordance with the laws of the State of Florida.

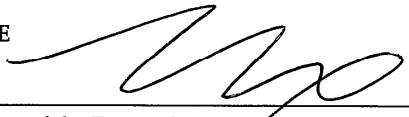
g. The jurisdiction and venue for any litigation concerning the Agreement will be the State of Florida, County of Broward.

h. In the event of any litigation concerning this agreement, the prevailing party will be awarded reasonable attorney's fees.

i. Any conflict between the express provisions of the agreement and the Request for Proposal shall be resolved by having the provisions of the contract prevail.


IN WITNESS WHEREOF, intending to be legally bound thereby, the parties hereto have hereunder set their hands and seals on the day and year first above written.

TOWN: TOWN OF DAVIE

By: 
Mayor of the Town of Davie

Attested To By: 
Town Clerk

LICENSEE: TOBY'S CONCESSION SERVICES, INC.

By: 

Title: PRESIDENT

Witness: Jeanette M. Reddy

Attachment “A”

Amendment Number One
To
Agreement Between The Town of Davie and
Toby’s Concession Service, Inc. For Concession Service at Pine Island Park

Amend Item A. License and Terms 2.

2. The term of this agreement shall be for the period commencing on January 1, 2010 and terminating on January 15, 2013.

Attachment “B”

Amendment Number Two
To
Agreement Between The Town of Davie and
Toby’s Concession Service, Inc. For Concession Service at Pine Island Park

Add License and Terms Item 3

3. Town shall have the option to take over the operation of the Pool Area Concession during the second and third years of the extension period.

Attachment “C”

Amendment Number Three
To
Agreement Between The Town of Davie and
Toby’s Concession Service, Inc For Concession Service at Pine Island Park

Amend Item B. Payment 1.

1. As payment for the License hereby granted for the right and privilege of selling food, beverages, refreshments and other concession type products, the Licensee shall pay to the Town a Fixed Monthly Amount of \$1,500 per month for Regular Season Sports Program Games and Practices; \$150 per program for Post Season Sports Program Games and \$150 per tournament for Tournament Events consisting of thirty (30) or more teams and conducted for a minimum of two (2) days.

Attachment “D”

Amendment Number Four
To
Agreement Between The Town of Davie and
Toby’s Concession Service, Inc. For Concession Service at Pine Island Park

Add Item I Operations 25.

I. Operations

25. The Town’s Approved Travel Sports Groups may conduct fundraising sale of snow cones and popcorn during their program practices, games.